

ANN BAVENDER*
HARRY F. COLE
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
JEFFREY J. GEE*
FRANK R. JAZZO
M. SCOTT JOHNSON*
MITCHELL LAZARUS
STEPHEN T. LOVELADY*
SUSAN A. MARSHALL
HARRY C. MARTIN
ALISON J. MILLER
FRANCISCO R. MONTERO
LEE G. PETRO*
RAYMOND J. QUIANZON
MICHAEL W. RICHARDS*
JAMES P. RILEY
KATHLEEN VICTORY
HOWARD M. WEISS
*NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET
ARLINGTON, VIRGINIA 22209

OFFICE: (703) 812-0400

FAX: (703) 812-0486

www.fhhlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)
OF COUNSEL
DONALD J. EVANS
EDWARD S. O'NEILL*
ROBERT M. GURSS*
EUGENE M. LAWSON, JR.
WRITER'S DIRECT

EX-107-517 COPY ORIGINAL

703-812-0450
riley@fhhlaw.com

October 17, 1005

RECEIVED

OCT 17 2005

Federal Communications Commission
Office of Secretary

BY HAND DELIVERY

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: MM Docket 05-263

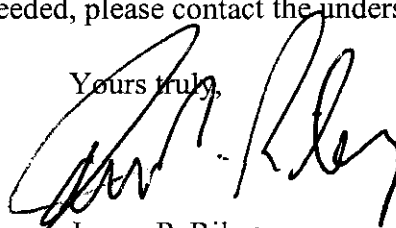
Dear Ms. Dortch:

Enclosed are an original and four copies of Comments by Millennium Media, Inc. to be filed in the above-referenced docket.

Please date-stamp the extra copy and return it for our files.

Should any additional information be needed, please contact the undersigned.

Yours truly,



James P. Riley

JPR:deb

Enclosures

cc: Assistant Chief (By Fax; 202-417-2053)
Audio Division, Media Bureau

2. of Copies rec'd 0 & 4
List A B O D E

**Before the
Federal Communications Commission
Washington, DC 20554**

RECEIVED

OCT 17 2005

Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket 05-263
Table of Allotments)	
FM Broadcast Stations)	RM-11269
Grants and Church Rock, New Mexico)	

To: Secretary, Federal Communications Commission

Attention: Assistant Chief, Audio Division, Media Bureau

COMMENTS

Millennium Media, Inc. ("Millennium"), petitioner in the above-referenced proceeding, by counsel submits its comments in support of the proposal put forth in the Commission's Notice of Proposed Rule Making (DA 05-2339) released August 26, 2005.

1. The Commission proposed the deletion of Channel 279 from Grants, New Mexico, where it has been one of three FM allotments and one of three radio broadcast stations,¹ and its reallocation to Church Rock, New Mexico. Millennium requested the reallocation of Channel 279 so that Church Rock could receive its first FM allotment and gain its first radio broadcast station with the modification of the license for Millennium's KYVA-FM to specify Church Rock as its new community of license, thus serving the third FM allotment priority.

¹In addition to Millennium's KYVA-FM on Channel 279, Stations KDSK (FM) and KMIN (AM) are licensed to Grants. Channel 244C3 is allotted to Grants and available to provide a third local service.

2. This proceeding is governed by Section 1.420(i) of the Commission's rules, permitting the FCC's modification of the KYVA-FM license to specify Church Rock as its new community of license without receiving competing expressions of interest. The allotment of Channel 279 to Church Rock is mutually exclusive with the existing KYVA-FM license at Grants. As noted in the attached Engineering Statement of Hatfield & Dawson Consulting Electrical Engineers, discussed further below, subsequent to Millennium's initiation of this proceeding the FCC's "show cause" procedure (Section 73.3573, Note 4) led to the reclassification of KYVA-FM's channel at Grants to C0, with no change whatsoever in the facilities of KYVA-FM. As shown at p. 9 of the Hatfield & Dawson statement supporting Millennium's April 29, 2005, Petition for Rule Making, the separation between KYVA-FM's licensed Grants site and its proposed Church Rock site is 43.24 km. Hence, the proposed allotment of 279C to Church Rock remains mutually exclusive with the licensed 279C0 allotment at Grants, a separation of 281 km being required by Section 73.207.

3. The attached Hatfield & Dawson statement demonstrates that notwithstanding the reclassification of Channel 279C at Grants to 279C0, the other services calculation and comparisons in the Hatfield & Dawson engineering statement which accompanied Millennium's Petition for Rule Making remain valid. Consequently, the public interest basis for the Commission's proposed reallocation of Channel 279 from Grants to Church Rock remains as it was articulated in the Commission's Notice of Proposed Rule Making.

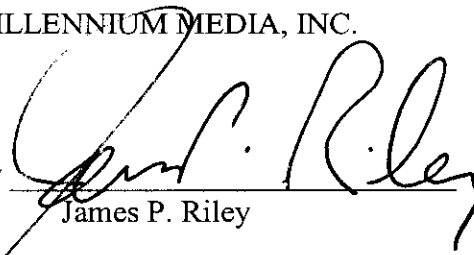
4. Millennium Media intends to apply for the authorization to construct a Channel 279C facility at Church Rock if Section 73.202(b) is amended as proposed in the Notice and, if authorized, to promptly construct the new facility in order to bring to Church Rock its first local

broadcast service. Millennium urges the Commission to promptly issue a Report and Order amending Section 73.202(b) as proposed in the Notice and modifying KYVA-FM's license accordingly.

Respectfully submitted,

MILLENNIUM MEDIA, INC.

By


James P. Riley

of

Fletcher, Heald & Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400

Its Attorney

October 17, 2005

HATFIELD & DAWSON

JAMES B. HATFIELD, PE
BENJAMIN F. DAWSON III, PE
THOMAS M. ECKELS, PE
STEPHEN S. LOCKWOOD, PE
DAVID J. PINION, PE

CONSULTING ELECTRICAL ENGINEERS
9500 GREENWOOD AVE. N.
SEATTLE, WASHINGTON 98103

PAUL W. LEONARD, PE
ERIK C. SWANSON, EIT
THOMAS S. GORTON, PE

TELEPHONE
(206) 783-9151
FACSIMILE
(206) 789-9834
E-MAIL
hatdaw@hatdaw.com

MAURY L. HATFIELD, PE
CONSULTANT
BOX 1326
ALICE SPRINGS, NT 5950
AUSTRALIA

**Engineering Statement
Comments in MB Docket No. 05-263
Church Rock and Grants, New Mexico
October 2005**

This Engineering Statement has been prepared on behalf of Millennium Media, Inc. ("Millennium"), licensee of station KYVA-FM at Grants, New Mexico. Millennium has proposed in MB Docket No. 05-263 to reallocate Channel 279C from Grants to Church Rock, New Mexico, and to modify the license of station KYVA-FM to specify operation at Church Rock.

At the time Millennium first advanced the KYVA-FM reallocation proposal, in April 2005, the Grants allotment was on Channel 279C. On August 1, 2005, however, the KYVA-FM license was reissued to reclassify the allotment from Class C to Class CØ. This change involved no physical or electrical modification of the KYVA-FM transmitting facility. The Class CØ reclassification occurred in response to a "triggering" application for a new FM station on Channel 279C1 at Questa, New Mexico (FCC File No. BNPH-20041230ADH). KYVA-FM operates with 100 kW ERP at 414 meters HAAT, which is below the current Class C minimum of 100 kW at 451 meters HAAT, and the station was therefore subject to reclassification as a Class CØ facility.

The Engineering Statement which was prepared in support of Millennium's April 2005 Petition for Rulemaking included a study of the resulting loss area, which demonstrated that no area would lose its first or second aural service as a result of the reallocation of KYVA-FM from Grants to Church Rock.

Due to an anomaly in the Commission's stated methodology for evaluating loss and gain areas in the context of a rulemaking proceeding, the August 2005 reclassification of the underlying KYVA-FM allotment to Class CØ could be interpreted to alter the results of the loss area study, and cause it to appear that 8 persons would lose their second aural service. This is not, in fact, the appropriate conclusion in the instant case.

Specifically, Commission policy on evaluating loss and gain areas in a rulemaking context requires that "maximum facilities for the class of station, except for Class C, should be considered. For the latter class, the minimum or existing Class C facilities, whichever is greater, should be used in the study."¹

There are two other FM stations operating from the same transmitter site as the present KYVA-FM operation, with very similar power and height. One of those stations, KXXQ Channel 264CØ Milan, operates as a Class CØ facility. The other station, KKOR Channel 233C Gallup, is below the current Class C minimum HAAT but still operates as a Class C facility. The technical data for the three stations are summarized in the following table:

¹ See Stamps and Fouke, Arkansas, 14 FCC Rcd 10533 (1999).

Station	Channel	Community	Coordinates	ERP	HAAT
KYVA-FM	279CØ	Grants	N35-28-03 W108-14-25	100 kW	414m
KXXQ	264CØ	Milan	N35-28-07 W108-14-24	100 kW	415 m
KKOR	233C	Gallup	N35-28-03 W108-14-25	100 kW	421 m

Despite the fact that KYVA-FM operates from the same transmitter site as KKOR, but with a lower HAAT, one interpretation of the Commission's methodology would make it appear that KYVA-FM provides service to a larger area than does KKOR. Specifically, KYVA-FM would be evaluated as providing service to an 83 km radius circle (maximum Class CØ facilities), while KKOR would be evaluated as providing service to an 81 km radius circle (100 kW at 421 meters HAAT).

It is clear from even a cursory review of the technical parameters of KYVA-FM and the other two stations operating from this transmitter site that the reallocation of KYVA-FM to Church Rock will not deprive any area of its second aural service. KYVA-FM actually has the lowest HAAT value of the stations at this transmitter site. Therefore, *all areas currently receiving service from KYVA-FM will continue to receive service from both KXXQ and KKOR.*²

In any case, the Commission's methodology states that Class C stations should be assumed to be operating with "minimum or existing Class C facilities, *whichever is greater*" (emphasis added). In the case of KKOR, minimum Class C facilities (100 kW at 451 meters HAAT) are greater than

² The 400-foot horizontal difference between the locations of the KYVA-FM and KXXQ tower locations is immaterial; the difference between the two locations is so slight that there is no cognizable difference in the coverage areas of KYVA-FM and KXXQ.

the existing facilities (100 kW at 421 meters HAAT). As a result, the KKOR service area completely duplicates the existing KYVA-FM service area.

This anomaly is not limited to KKOR, and pertains equally to any sub-451-meter Class C station which was authorized prior to the January 19, 2001 effective date of the Commission's decision to create the new Class CØ designation. Notably, the policy enunciated in *Stamps and Fouke*, (and quoted above) pre-dates the creation of Class CØ, and we are not aware of any more recent Commission decision (specifically, any decision issued after January 19, 2001) which directly addresses this anomaly or which offers revised evaluation procedures applicable to sub-451-meter Class C stations in this context.

The treatment of Class C stations as enunciated in *Stamps and Fouke*, as well as in numerous other cases, derives from *Greenup* (6 FCC Rcd 1493).³ At the time of the *Greenup* decision in 1991, Class C1 had recently been created in Docket 80-90 as a new sub-class of Class C, and sub-300-meter Class C stations had been subject to reclassification as Class C1 if by March 1, 1987, they had not filed to increase HAAT to at least 300 meters. Therefore, when deciding *Greenup* the Commission had every reason to believe that any operating Class C station was at or above the Class C minimum HAAT of 300 meters.

³ From Footnote 7: "The staff made an exception from its general assumption of maximum facilities, however, for Class C stations. To determine the extent of a Class C station's service, the Commission uses the Class C ERP of 100 kW (except in those rare instances in which a Class C station must reduce its power because its HAAT is greater than the reference HAAT for Class C (600 meters), in which case the Commission uses the actual ERP) and either the authorized HAAT for existing stations or the Class C minimum HAAT of 300 meters for vacant allotments. This departure from the general assumption of maximum facilities is justified by FAA constraints, local zoning ordinances, and cost considerations that often prevent the construction of tall antenna towers necessary to exceed the Class C minimum HAAT."

In contrast, when Class CØ was created as a new sub-class of Class C, the Commission determined to leave all sub-451-meter Class C stations with their existing classification. Reclassification to Class CØ would not occur automatically, and would only occur after a "triggering" application or proposal was filed by another party which could only be granted upon the reclassification of the Class C station as a Class CØ facility (or upon a voluntary filing to reclassify). Thus we arrive at the circumstance today in which numerous Class C stations continue to operate with HAAT values of less than 451 meters, despite the fact that 451 meters has been the minimum HAAT value for Class C stations for nearly five years.

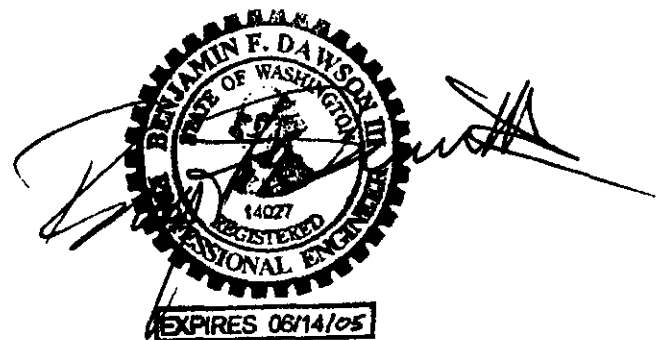
Where a coverage comparison is to be made between Class CØ stations and a Class C station, and the Class C station's height is in fact within the range of the CØ category, we submit that the Commission should either: (1) examine all stations at their actual heights, (2) examine all stations at maximum Class CØ heights, or (3) examine Class CØ stations at maximum CØ height and height-deficient Class C stations at minimum Class C height as is done for vacant Class C channels. Such an approach is a reasonable exception to Greenup because the licensing context in which Greenup was decided no longer prevails. Furthermore, either of these approaches would lead to the same conclusion in the instant case, namely that the KKOR service area completely duplicates the existing KYVA-FM service area.

It is therefore respectfully submitted that despite the Class CØ reclassification of KYVA-FM, the reallocation of KYVA-FM from Grants to Church Rock will not deprive any area of its first or second aural service.

Statement of Engineer

This Engineering Statement supporting Comments in MB Docket No. 05-263 (Church Rock and Grants, New Mexico) has been prepared by Erik C. Swanson under my direct supervision. All representations herein are true to the best of my knowledge. I am an experienced radio engineer whose qualifications are a matter of record with the Federal Communications Commission. I am a partner in the firm of Hatfield & Dawson Consulting Engineers and am Registered as a Professional Engineer in the States of Washington and California.

Signed this 14th day of October, 2005.



Benjamin F. Dawson III, P.E.

Erik C. Swanson

Hatfield & Dawson Consulting Engineers